91-1613

Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

MAURY HEXAMER,

Petitioner,

v.

FIRST GIBRALTAR SAVINGS ASSOCIATION

Respondent,

Petition for Writ of Certiorari
To the United States Court of Appeals
for the Fifth Circuit

Maury Hexamer
Petitioner, pro se

Rt. 2, Box 91Y
Sherman, Texas 75090
(903) 892-8621

45

QUESTION PRESENTED FOR REVIEW:

DID THE DOCTRINE OF "ANCILLARY JURISDICTION" ALLOW THE DISTRICT COURT TO ORDER INTERVENTION FOR FILING OF INDEPENDENT COUNTERCLAIM WHEN IT APPEARED THAT THE COURT LACKED SUBJECT MATTER JURISDICTION OVER PRIOR CLAIM REMOVED FROM STATE COURT?

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Petition for Writ of Certiorari
To the United States Court of Appeals
for the Fifth Circuit

HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES Maury Hexamer, Petitioner herein, pro se, and files this Petition for Writ of Certiorari.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit

was entered on November 20, 1991 and is attached hereto as Appendix A. The opinion denying the petition for panel rehearing was entered on January 2, 1992. It is attached hereto as Appendix B. The Order granting the Motion to Intervene filed by Respondent First Gibraltar was entered on May 21, 1991 and is attached hereto as Appendix C.

STATEMENT OF GROUNDS INVOKING JURISDICTION OF THE UNITED STATES SUPREME COURT

1. On November 20, 1991 the United States Court of Appeals for the Fifth Circuit issued an opinion affirming the trial court's dismissal of Petitioner's state court removal claims against the Federal Deposit Insurance Corporation, as Receiver... However, the Court of Appeals directed the District Court to issue an order of clarification that the

dismissal was "...for lack of subject matter jurisdiction..." and therefore without prejudice to the merits of Petitioner's state court claims. The Court of Appeals affirmed the District Court's Order of Intervention prior to subsequent remand, as to Respondent First Gibraltar. (Appendix A)

2. On January 2, 1992 the United States Court of Appeals issued an Order that the petition for panel rehearing be denied. (Appendix B)

3. This Petition for Writ of Certiorari is filed within 90 days of the Order denying petition for panel rehearing.

4. Petitioner believes that the following statutory provisions confer jurisdiction on this honorable Court to review the judgement in question by writ of certiorari: 28 U.S.C. Section 1254.

UNITED STATES CONSTITUTION:

Article III, Section 2:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party--to controversies between two or more States;--between a State and citizens of another State--between citizens of different states--between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

STATEMENT OF THE CASE

Petitioner brought suit in state court against a state-chartered savings and loan association which later failed. The FSLIC as receiver removed the case to district court, and sought dismissal of the case as moot. Petitioner sought a remand on grounds of a lack of subject matter jurisdiction.

The district court based its removal jurisdiction on 12 U.S.C. 1441(b)(6). The Fifth Circuit panel disagreed, but found jurisdiction in the penumbra of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA): 103 Stat. 183.

The district court signed an order of intervention "...of right or alternatively for permissive intervention..." two days after it was filed: more than eighteen

months after the case was removed; and entered the order of alternative intervention into the record on the day of the dismissal hearing. The district court dismissed for "mootness" based on the same agency findings of insolvency required for appointment of the receiver. The district court then "remanded" to the state court Gibraltar's cross-claims against Petitioner.

The Court of Appeals ordered the district court to clarify that the dismissal of Petitioner's claims was "...for lack of subject matter jurisdiction..." However, the Court of Appeals upheld the concomitant order of intervention based on the doctrine of "auxillary jurisdiction".

ARGUMENT

The instant case represents a broad strategy employed by FDIC attorneys to achieve wholesale disposal of state-court complaints against failed savings and loans institutions. However, the strategy operates beyond the outer limits of federal judicial power and is otherwise fatally flawed.

According to such strategy: the state-court case is first removed to federal court; and thereafter dismissed as "moot" based on the initial insufficiency or lack of available funds in the receivership estate. The strategy operates beyond the outer limits of federal judicial power because a federal district court which lacks original jurisdiction also thereby lacks the power to remove a case from state court.

It is axiomatic that the judicial power of the federal courts cannot be extended to control the outcome of a state-court case, if the federal court lacks subject matter jurisdiction over the controversy: United States Constitution Art. III, Section 2. Congress recognized this fact by its mandate of a remand when the court's lack of subject matter jurisdiction becomes apparent: 28 Section 1447(c).

The strategy is fatally flawed in that because the case is not actually disposed on the merits; there is no substantive bar to the state court's exercise of its own jurisdiction over the claims. Rather, the FDIC strategy is mere procedural gamesmanship which tests the outer limits of federal jurisdictional power. As a practical matter, the prospect of more such

tactics inhibits attempts at further recourse. In the instant case, Petitioner was required to seek appellate review of the dismissal because of the district court's last-minute, exparte, extra-jurisdictional order of intervention. The alternative intervention order goes far beyond the outer limits of federal jurisdictional power.

In the instant case, there would have been no state-court case to remand if the federal court had not allowed Respondent to intervene. Thus, the order would allow extra-jurisdictional power of the federal courts to be exercised in a way which could determine the outcome of a state-court case. At the very least, the order will likely cause much mischief in the proliferation of related federal legal issues in

post-intervention/remand litigation in state court.

The doctrine of "auxillary jurisdiction" cannot be properly applied where the district court had no prior basis for jurisdiction. Moreover, the intervenor counter-claims were not logically dependent upon such claims nor did the prior claim involve any rights of First Gibraltar which might have been irretrievably lost unless it could assert them in the federal action.: Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 57 LEd2 274 (1976). Further, the policy on which the doctrine of "auxillary jurisdiction" is based is not served by Respondent's intervention.

This honorable Court's opinion in United Mine Workers v. Gibbs, 383 U.S. 715, 726, 16 LEd2 218 (1966) explains that judicial efficiency and economy are

the raison d'etre of ancillary jurisdiction. The opinion reasons where the interests of judicial economy are no longer advanced by the retention of ancillary claims, the state-law actions are to be dismissed.

"[I]f the federal claims are dismissed before trial, the state claims should be dismissed as well."

The district court's hasty granting of the intervention on the very day of the dismissal hearing belies any notion that the intervention advanced any legitimate policy. Respondent subsequent motion for a remand to state court while Petitioner's claims against the FDIC were still pending likewise belies any real interest in advancing judicial economy or efficiency. In addition, the order of intervention constitutes an unconstitutional infringement on the sovereignty of the

state court proscribed by Shamrock Oil Corp. v. Sheets, 313 U.S. 100, 85 LEd 1214, 1219 (1941)

This opinion warned, in no uncertain terms:

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. Due regard for the rightful independence of state governments which should actuate federal courts, requires that they SCRUPULOUSLY CONFINE THEIR OWN JURISDICTION to the precise limits which the statute has defined." (emphasis supplied)

The Fifth Circuit panel ignores this admonition with its suggestion that the removal was proper (retroactively) because authority for such removal can be implied from the FIRREA:

"...in spite of the absence of an 'express provision in FIRREA which allows the FDIC to succeed the FSLIC as receiver for institutions placed into receivership prior to January 1, 1989[,]' the statute nonetheless contemplates exactly such a result."

The Fifth Circuit likewise ignores numerous unusual circumstances in the instant case which militate against additional statutory findings required for an intervenor of right: Fed.R.Civ.Proc. Rule 24(a)(2). For example: the FDIC acted in concert with First Gibraltar in seeking intervention; the president of First Gibraltar played a crucial role in the disposition of the assets of First Texas as an alter ego for the FSLIC [FDIC]; First Gibraltar made material misrepresentations of fact in its Motion to Intervene; the intervention motion was filed almost eighteen months after the removal to coincide with a dismissal hearing which had been scheduled for months; and the motion was decided without giving Petitioner time to respond provided under Local Court Rules: Rule 6(e).

The Fifth Circuit panel wrongly holds that "ancillary jurisdiction" is an exception to the axioms of federal jurisdictional power set forth in Finley v. United States, __ U.S.___, 109 S.Ct. 2003 (1989). The panel wrongly implies that Finley offers support for the notion that a court which ultimately lacks subject matter jurisdiction over a removal claim can properly exercise "ancillary jurisdiction" over an intervening claim. Petitioner has found not a single published opinion to support this proposition. Finley correctly points out:

> "It remains rudimentary law that '[a]s regards all courts of the United States infereior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. [cites ommitted]"

The concept of "auxillary jurisdiction" has heretofore been expressly predicated on the prior existence of subject matter jurisdiction over the res which is the subject matter of the intervening suit. Finding auxillary jurisdiction in the face of a lack of subject matter jurisdiction over the primary case is analogous to multiplying by zero. Moreover, federal jurisdiction never controlled the property or funds under dispute in First Gibraltar's claims against Petitioner both because of a lack of subject matter jurisdiction and because of a lack of logical dependence of Gibraltar's cross-claims on the removal claims: e.g., Freeman v. How, 24 How. 450, 16 LEd. 749 (1861); Aldinger v. Howard, 427 U.S. 1, 11, 49 LEd2 276 (1976).

Congress anticipated that removal may occur under circumstances where it did not initially "...appear..." that the the district court lacked subject matter jurisdiction: 28 U.S.C. Section 1447(c). However, that statute is clearly intended to require a REmand of the case mistakenly taken from the state court: not a REmand of a new case instigated under the auspices of the federal court when the state case was dismissed.

The panel seeks to rationalize the action of the district court by implying that the district court's lack of subject matter jurisdiction based on "mootness" was not apparent until the factual hearing. In fact, the jurisdictional picture was not altered by any "evidence" submitted at the uncontested "...dismissal hearing..."

because the district court's ultimate dismissal for subject matter jurisdiction was based on the same evidence* which supported the removal in the first place. The district court's use or abuse of discretion in issuing the order of intervention is not determinative; however, since jurisdictional power could not be supplied even by the proper exercise of discretion by the district court.

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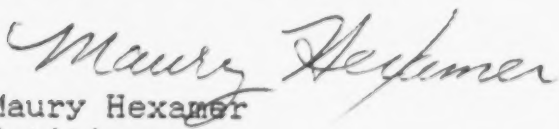
Ft.#1: A "...triangular transaction..." among the FSLIC as Receiver, the FSLIC Corporate and Respondent polished off the receivership's function in one or two days: prior to removal. It also precluded recoupment of receivership funds or market value assessment of the validity of the agency estimates which precipitated the findings necessary for the receivership. For this reasons, Petitioner did not question the limited finding on which the district court based its dismissal.

Petitioner submits that there are special and important reasons for granting the instant writ. The well-founded constitutional axioms setting forth prerequisites for the exercise of limited federal jurisdictional power must not be allowed to be hastily and casually cast aside for mere expediency simply because crises have developed in the management of savings and loan institutions. If the decision by the Fifth Circuit to apply the doctrine of "...auxillary jurisdiction..." to uphold the district court's order of intervention is allowed to stand; it holds the potential to do much damage to the integrity of the federal courts and could have far-reaching and disasterous consequences for federalism.

CONCLUSION

For the above reasons, Petitioner respectfully requests that her Petition for Writ of Certiorari be granted to review the questions presented herein.

Respectfully submitted,



Maury Hexamer
Petitioner,
Rt. 2, Box 91Y
Sherman, Texas 75090
(903) 892-8621

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-4549

MAURY HEXAMER,

Plaintiff-Appellant,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for FIRST TEXAS SAVINGS AND LOAN ASSOCIATION,

Defendant-Appellee

and

FIRST GIBRALTAR SAVINGS ASSOCIATION,

Intervenor/Defendant-Appellee.

Appeal from
the United States District Court
for the Eastern District of Texas
(S-89-24-CA)

(November 20, 1991)

Before KING, JOHNSON, and DAVIS,

Circuit Judges.

PER CURIAM:*

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* Local Rule 47.5 provides: "The publication of opinions that have no

Maury Hexamer brought suit in state court against a savings and loan association which later failed. The federal receiver removed the case to district court, which later dismissed the case as moot, finding that there would never be funds available from the receivership estate to pay general creditors. Hexamer contends that removal was improper; that the district court improperly dismissed for mootness; and that the dismissal failed to state that it was for lack of subject matter jurisdiction, not a judgement on the merits.

*[cont'd] precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burden on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Hexamer also appeals the intervention by the purchaser of the failed savings and loan's assets, including the note on which Hexamer sued; she contends that the district court lacked jurisdiction to grant the intervention. We affirm the district court's disposition of the case, but direct it to enter a new judgement clarifying that the dismissal is for lack of subject matter jurisdiction, without prejudice to the merits.

I. BACKGROUND

Maury Hexamer filed suit in state court in 1986 against First Texas Savings Association (First Texas), seeking damages for an alleged extrajudicial foreclosure of her rural homestead. First Texas filed a general denial. In December 1988, the Federal

Home Loan Bank Board (FHLBB) determined that First Texas Insurance Corporation (FSLIC) receiver. In January 1989, FSLIC removed the case to federal district court.

In May 1989, FSLIC filed a motion to dismiss, arguing that, because FHLBB had determined that there would be no assets to satisfy the claims of general creditors, Hexamer's action was both moot and failed to state a claim. In February 1990, the district court determined that it required additional evidence to resolve the motion to dismiss, and scheduled a hearing for May

1991.1 Five days before the hearing, First Gibraltar Savings Association (First Gibraltar) filed a motion to intervene, which was granted on May 21. The court also accepted First Gibraltar's counterclaim against Hexamer.

Two and one-half hours before the hearing was scheduled to begin, Hexamer filed an objection to the hearing and requested permission to file written objections to any evidence presented by

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1At the time of removal, FSLIC was the named defendant as receiver for First Texas. The docket sheet indicates that FSLIC remained the named defendant until April 26, 1990, when FSLIC filed a motion designating the Federal Deposit Insurance Corporation (FDIC) as receiver for First Texas. By the time of the hearing, the court had substituted FDIC for FSLIC as the named defendant.

FDIC at the hearing.[2] The objection also stated that Hexamer waived her right to be present at the hearing. The court held the hearing as scheduled, in Hexamer's absence, and received evidence presented by FDIC. In its order of dismissal, the court found that "First Texas' receivership estate will never have any assets from which a judgement for damages might be satisfied." Consequently, the court dismissed Hexamer's claims against FDIC as receiver for First Texas. Later, the court remanded the remaining portion of the case (consisting of First Gibralar's counterclaim) to state court.

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[2]Hexamer does not argue on appeal that she could have or would have presented any contrary evidence if she had been permitted.

II. STANDARD OF REVIEW

Since the district court dismissed the case for mootness, and hence lack of subject matter jurisdiction pursuant to Rule 12(b)(1), we review the district court's legal conclusions de novo. The factual questions regarding the existence of funds in the receivership estate were the subject of disputed evidence presented at the hearing. Consequently, we review the district court's findings of fact for clear error. Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981). With regard to First Gibraltar's intervention, we review the district court's implicit legal holding--that it had jurisdiction--de novo.

III. DISCUSSION

A. Subject Matter Jurisdiction to Support Removal

Hexamer argues that removal was improper in this case because the district court lacked subject matter jurisdiction. The district court disagreed, basing its decision on Triland Holdings & Co. v. Sunbelt Serv. Corp., 884 F.2d 205, 207 (5th Cir. 1989) (citing Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 (FIRREA)). In Triland Holdings, we held that the passage of FIRREA "eliminates any concern that the federal district courts may lack jurisdiction in these cases." Id. There can be no dispute that removal was proper if FDIC is the proper

party. See 12 U.S.C. Section 1819(b)(2)(B).

The district court's order scheduling a hearing on FSLIC's motion to dismiss held that FIRREA substituted FDIC for FSLIC "by operation of law in every civil action to which [FSLIC was pa party]." The district court mistakenly cited 12 U.S.C. Section 1441a(b)(6), which limits substitution by the Resolution Trust Company (RTC) to cases in which FSLIC was appointed conservator or receiver between January 1, 1989 and August 9, 1989. Since FSLIC was appointed receiver of First Texas in December 1988, this provision does not apply.

We have recently held, however, that in spite of the absence of an "express provision in FIRREA which allows the

FDIC to succeed the FSLIC as receiver for institutions placed into receivership prior to January 1, 1989[,]" the statute nonetheless contemplates exactly such a result. FDIC v. CLaycomb, 945 F.2d 853, 857-59 (5th Cir. 1991). Claycomb provides binding authority for the proposition that FDIC is the proper party under the circumstances of this case.

B. Correctness of the Mootness Dismissal

Hexamer also argues that the district court should not have dismissed the case based on mootness. "[T]he mere possibility that a judgement debtor lacks the means to satisfy its monetary liability does not kill the issues in a case." Ratner v. Sioux Natural Gas Corp., 770 F.2d 512, 516 (5th Cir.

1985), quoted in Triland Holdings, 884 F.2d at 208. Wright and Miller state the proposition more baldly: "Claims for damages or other monetary relief automatically avoid mootness, so long as the claim remans viable. Damages should be denied on the merits, not on grounds of mootnesss." 13A Charles Wright, Arthur Miller, and Edward Cooper, Federal Practice and Procedure Section 3533.3, at 262 (1984). Nonetheless, in Triland Holdings,we explicitly left open the possibility that a "prudential" dismissal for mootness would be appropriate in the event of a proper finding that there would never be any assets with which to satisfy the claim of a judgement creditor against the failed institution. 884 F.2d at 208. The district court in this case

expressly followed the path down which we pointed in Triland Holdings.

Our review of factual findings in a Rule 12(b)(1) case in which the district court rested its decision on disputed facts looks solely for clear error. Williamson, 645 F.2d at 413. Hexamer does not point to any evidence before the district cort which would demonstrate clear error in its finding that there will never be any assets to satisfy a favorable judgement. She argues only that FHLBB's finding of insolvency was procedurally deficient, since FHLBB allegedly did not receive the written approval of the Commissioner of the Texas Savings and Loan Department, as required by statute.

Such an allegation does not call the district court's factual conclusions into doubt.

C. Effect of Dismissal

Hexamer correctly points out that the district court's mootness dismissal operates as a finding that the court lacked subject matter jurisdiction, and thus does not constitute a judgement on the merits. Although the court's order of dismissal did not specify the procedural basis for its disposition of the case, a "prudential" dismissal for mootness consititutes a dismissal for lack of subject matter jurisdiction, not a judgement on the merits. See, e.g., Triland Holdings, 884 F.2d at 208. Accordingly, we direct the district court to enter a new judgement clarifying that its disposition of the

case rested on Rule 12(b)(1) and did not operate as a judgement on the merits.

D. Intervention of First Gibraltar

FDIC and First Gibraltar argue that none of the issues regarding First Gibraltar can be appealed, Since the district court remanded those issues to state court.3 However, the order granting intervention occurred prior to the remand order and is properly appealable. Mitchell v. Carlson, 896 F.2d 128, 133 (5th Cir. 1990). As in Mitchell, Hexamer appeals an earlier order, not the remand.

Hexamer argues that the district court should have denied First Gibraltar's motion to intervene because no federal law claims existed between

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3First Gibraltar adopted by reference the arguments made by FDIC, and did not file a separate brief.

Hexamer and First Gibraltar.4 Since there exists no independent basis for federal jurisdiction, she argues, First Gibraltar constitutes a pendent party, jurisdiction over which is forbidden by Finley v. United States, __U.S. __, 109 S.Ct. 2003 (1989).5

4First Gibraltar has not raised any arguments on appeal regarding this issue. We nevertheless must determine whether the district court had jurisdiction to issue its orders granting intervention and accepting First Gibraltar's counterclaim.

5We note that Congress has effectively overruled Finley, but the statute affects only cases commenced after its enactment on December 1, 1990. 28 U.S.C. Section 1367. Consequently, we must determine the law in the light of Finley and without the benefit of the later Congressional action. CF. Loeber v. Bay Tankers, Inc., 924 F.2d 1340, 1345 (5th Cir. 1991).

Finley does not affect this case, however, since First Gibraltar's intervention was supported by ancillary jurisdiction, and did not require the invocation of pendent party jurisdiction. "Where a person is entitled to intervene by right, the court acquires ancillary jurisdiction of his claim." Mothersill D.I.S..C. v. Petroleos Mexicanos, S.A., 831 F.2d 59, 61 n. 1 (5th Cir. 1987); see also 7C Charles Wright, Arthur Miller, and Mary Kane, Federal Practice and Procedure Sections 1917, 1921 (2d ed. 1986); 3B James Moore, et al., Moore's Federal Practice Sections 24.17-24.18 (2d ed. 1991). The Supreme Court explicitly disavowed any limiting effect on ancillary jurisdiction as a result of its holding on pendent party

jurisdiction. Finley, 109 S.Ct. at 2008 & n.4 (distinguishing pendent from ancillary jurisdiction). This case presents a counterclaim by an intervenor as of right, a situation in which the courts have traditionally upheld the exercise of ancillary jurisdiction.6 Finley did not alter that approach, and we decline to extend its rationale. Hexamer does not argue that First Gibraltar's intervention was otherwise unwarranted.

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6 We have suggested that Finley might limit a district court's continuing exercise of ancillary jurisdiction in the context of a plaintiff's third-party claim when the parties to the original suit had settled. W.R. Grace & Co. v. Continental Casualty Co., 896 F.2d 865 (5th Cir. 1990). W.R. Grace cited Finley as one factor among many supporting its finding that the district court's retention of jurisdiction constituted an abuse of discretion; the court did not rest its decision on the holding of Finley, nor could it have.

V. CONCLUSION

We affirm the district court's dismissal of Hexamer's clams against FDIC, but direct the district court to enter a new judgement clarifying that its dismissal is without prejudice to the merits of Hexamer's claims. In all other respects, the judgement is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-4549

MAURY HEXAMER,

Plaintiff-Appellant,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for FIRST TEXAS SAVINGS AND LOAN ASSOCIATION,

Defendant-Appellee

and

FIRST GIBRALTAR SAVINGS ASSOCIATION,

Intervenor/Defendant-Appellee.

Appeal from
the United States District Court
for the Eastern District of Texas
(S-89-24-CA)

(January 2, 1992)

Before KING, JOHNSON, and DAVIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

Carolyn Denson King
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MAURY HEXAMER §
§
v. §
§ *
FIRST TEXAS SAVINGS AND LOAN §
ASSOCIATION AND TOHNIE E. HYNDS §

*CIVIL ACTION NO. S-89-24-CA

ORDER

CAME ON to be considered First Gibraltar Bank, FSB's Unopposed Motion to Intervene As of Right, or Alternatively, for Permissive Intervention, in the above-styled and referenced case. The Court having considered said Motion and the Complaint in Intervention tendered therewith, and it appearing to the Court that the said First Gibraltar Bank, FSB should be permitted to intervene as prayed, and the Court being duly advised in the premises, it is therefore

ORDERED, ADJUDGED and DECREED, that First Gibraltar's Unopposed Motion to Intervene As of Right, or Alternatively, For Permissive Intervention be and the same hereby is granted. It is further

ORDERED, ADJUDGED and DECREED, that First Gibraltar has leave to intervene in this cause, and is hereby made a party to this cause, and to that end the Original Complaint in Intervention attached as an exhibit to First Gibraltar's Motion be and the same hereby is deemed filed in this cause in the same manner and with like effect as if named an original party to this cause.

SIGNED this 18th day of May, 1990.

Paul Brown
UNITED STATES DISTRICT JUDGE